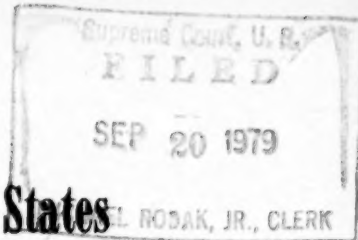


IN THE
Supreme Court of the United States



October Term, 1978
No. 79-205

STANLEY R. RADER,

Petitioner,

vs.

THE STATE OF CALIFORNIA,

Respondent.

**BRIEF IN OPPOSITION TO PETITION
FOR WRIT OF CERTIORARI**

GEORGE DEUKMEJIAN,
Attorney General,

LAWRENCE R. TAPPER,

JAMES M. CORDI,

WILLIAM S. ABBEY,

LAUREN R. BRAINARD,

Deputy Attorneys General,

3580 Wilshire Boulevard,

Los Angeles, Calif. 90010,

(213) 736-2007,

Counsel for Respondent.

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Statement of the Case

The instant Petition for Writ of Certiorari arises out of a civil action brought by the State of California (The People of the State of California v. Worldwide Church of God, Inc., etc., et al. Los Angeles Superior Court Case No. C 267607).¹ The purpose of that action is to protect the assets of three nonprofit charitable corporations, one of which is a church, from fraudulent misappropriation for the private benefit of the persons in control thereof. The action seeks an accounting from the defendants, one of whom is petitioner Rader, for their misappropriation of charitable assets, and any further equitable relief shown to be warranted by the accounting. It was brought by the Attorney General of the State of California as the only party

¹A copy of the Second Amended Complaint appears as Appendix A hereto.

other than the accused wrongdoers having the legal standing under California law to do so. (*See Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750.)

A receiver was appointed ex parte on January 2, 1979, upon an application and a showing of good cause by plaintiff State of California. That appointment was confirmed by order dated January 19, 1979, after a three-day evidentiary hearing concluded on January 12, 1979. At the January 10-12 hearing, petitioner Rader testified to numerous self-dealing transactions between himself and the three charitable corporations. Among other things, Mr. Rader admitted that he has a lucrative employment contract with defendant Worldwide Church of God, Inc.; that he is an officer and director/trustee of each of the three nonprofit corporate defendants; that he holds title to a house in Tucson, Arizona, which has been bought and paid for with Church funds; that he had taken title to a house in Beverly Hills which was bought and later maintained to a large extent with Church funds, and which he sold in 1978 for \$1.8 million, pocketing the proceeds; that he had organized an advertising agency (Worldwide Advertising, Inc.) to handle the purchase of television and radio time for the three charitable corporate defendants; that he had formed a partnership called Mid-Atlantic Leasing which purchased aircraft and then leased them to the Church at a profit; and that the law firm with which he is associated (Rader, Helge and Gerson), and the accounting firm that he had

organized (defendant Rader, Cornwall, Kessler and Palazzo), handled the legal and accounting work for the three corporate defendants.

The foregoing, in conjunction with other information obtained by the office of the Attorney General, underscored the need to inquire into Mr. Rader's financial and other ties to the three nonprofit corporate defendants. Consequently, on January 22, 1979, the Superior Court ordered that petitioner Rader give his deposition on January 31, 1979, in accordance with a notice of deposition previously served and filed by plaintiff State of California. Mr. Rader failed to appear for the taking of his deposition as ordered. At a hearing on March 21, 1979, the Superior Court ordered Mr. Rader's deposition to take place on March 27, 1979, in the office of the Attorney General. By stipulation of the parties, that date was continued one week to April 3, 1979, at 9:30 a.m.

Mr. Rader's deposition commenced at approximately 10:30 a.m. on April 3, 1979. (It was delayed because Mr. Rader refused to appear for his deposition until a hearing in court, scheduled by Mr. Rader's counsel, had been dispensed with.) Mr. Rader refused to answer, on the advice of counsel, virtually every question put to him during this phase of the deposition. Breaking for lunch at 12:00 noon, Mr. Rader was to return at 1:00 p.m. to resume the deposition. At 1:35 p.m., however, counsel for Mr. Rader, Allan Browne, telephoned the office of the Attorney General and stated that he and his client had decided to apply to the

trial court for an Ex Parte Temporary Restraining Order and/or Protective Order. That oral motion was found to be without justification and was denied.

The deposition was resumed at 3:45 p.m. on April 3, and Mr. Rader again refused to answer, without substantial justification, a myriad of questions.² The deposition was adjourned for the evening at 5:00 p.m.

²Among those questions which Mr. Rader refused to answer are the following:

1. In what year did you have your first contact with the church?
2. Are you an employee of Ambassador College?
3. Do you have access to records maintained by the church in Pasadena?
4. Do you have access to records maintained by the college in Pasadena?
5. As a trustee/director of the foundation do you have access to records maintained by the foundation in Pasadena?
6. Mr. Rader, how many directors/trustees does the church have on its board?
7. Will you name who the other directors are, please?
8. How many directors does Ambassador College presently have?
9. Mr. Rader, how often does the Board of Directors/Trustees meet for the church?
10. Does the Board of Directors maintain minutes as regards their meetings in the church?
11. When did you first meet Herbert W. Armstrong?
12. Can you tell me what the total receipts were for the church in 1978?
13. Do you know approximately how much the receipts were in 1978?
14. Do you know what the expenses were for the church in the year 1978?
15. Do you know whether expenses exceeded income?
16. Mr. Rader, did the church suffer a deficit in 1976-77?
17. Mr. Rader, did the church spend more money than it took in in the year 1976-77?
18. Is Worldwide Church of God a client of Worldwide Advertising, Inc.?
19. Was Ambassador College a client of Worldwide Advertising, Inc.?
20. Was the Ambassador International Cultural Foundation a client of Worldwide Advertising, Inc.?

The deposition resumed at approximately 9:45 a.m. on April 4, 1979. Mr. Rader was read the *Miranda* warning, advising him of his rights regarding self-incrimination. The purpose of giving this admonition, as was stated at the time, was to ensure that Mr. Rader understood that the deposition transcript would be a public document when lodged with the court, and would, therefore, be available to any criminal prosecutorial agency. Since the Attorney General had learned that the Internal Revenue Service was conducting a criminal investigation of respondent Rader, the admonition was given out of an abundance of caution. Mr. Rader was further informed that the present proceedings by the Attorney General are civil in nature and that no criminal investigation or proceeding has been initiated or is pending in this office. After conference with his counsel Mr. Rader stated he would not go forward with the deposition.

A motion to compel Mr. Rader's deposition was filed and set for hearing on April 27, 1979. After argument had commenced on April 27, the matter was continued to May 7, 1979, so that Mr. Rader could respond to the court's inquiry of whether he intended to invoke the right against self-incrimination as to every question asked him concerning his handling

21. Did the Worldwide Advertising, Inc. entity perform services in any capacity for the Worldwide Church of God in 1970?

22. Did Worldwide Advertising, Inc. during the years that you were an officer, director or stockholder thereof contract to provide services to Worldwide Church of God?

23. Did Mid-Atlantic Leasing lease an airplane or airplanes to Worldwide Church of God?

24. Was it formed for the purpose of leasing airplanes to Worldwide Church of God?

25. Were you during the year 1971 a partner in an entity known as Mid-Atlantic Leasing?

and use of the assets of the three charitable corporate defendants; if so, the setting of a deposition would seem to be an idle act. The court further requested that the office of the Attorney General file a brief declaration, reiterating assertions made in open court, that this office had no criminal proceedings or investigations pending which had focused on Mr. Rader as a suspect. Such a declaration was filed with the court.

On May 7, 1979, the trial court ruled that Mr. Rader had every right to invoke the privilege against self-incrimination but that he must do so on a question by question basis; that Mr. Rader did not have the right to refuse to testify entirely because that right belongs only to a criminal defendant. The court further found that the questions which Mr. Rader had refused to answer were proper subjects of discovery and that no ecclesiastic privilege pertained thereto. The court therefore ordered Mr. Rader to recommence his deposition on May 29, 1979, at 10:00 a.m. in the office of the Attorney General.

On May 25, 1979, Mr. Rader's attorney, Allan Browne, telephoned the office of the Attorney General and stated that Mr. Rader would not appear for his deposition as ordered because there was pending before the California Court of Appeal a request for an immediate stay and a Petition for a Writ of Prohibition/Mandate. At approximately 3:00 p.m. on May 25, 1979, the Court of Appeal denied that application and petition.³ Despite that denial, Mr. Rader still refused to appear for his deposition on May 29th. Consequently, a motion to have Mr. Rader held in contempt and

³Rader's subsequent Petition for Hearing in the California Supreme Court was denied on July 5, 1979.

for the setting of a new date for Mr. Rader's deposition was filed, and was heard on August 7, 1979. While not holding him in contempt at that time, the trial court once again ruled that Mr. Rader must give his deposition. Upon being advised by his counsel that Mr. Rader was out of the country but would be back in the United States on August 25th, the court ordered that Mr. Rader resume his deposition on August 27, 1979, at 10:00 a.m. in the office of the Attorney General.

Mr. Rader failed to appear for his deposition on August 27, 1979; instead, he has filed a motion to continue the taking of his deposition to some future date. This motion is set for hearing on September 21, 1979.

ARGUMENT

I

The Investigation of the Secular Financial Affairs of the Corporate Defendants in Civil Action No. C 267607 Does Not Infringe Upon First Amendment Rights

Petitioner's first argument is that he cannot be compelled to testify (*i.e.*, give a deposition) in Civil Action No. C 267607, because (1) the state's investigation and action for an accounting are unconstitutional under the First Amendment, and (2) it would be a violation of the Due Process Clause to compel him to testify in proceedings which exceed the constitutional power of the state.

These First Amendment arguments are a repetition of the arguments presented by this petitioner and the other defendants in the companion case of *Worldwide Church of God v. State of California*, No. 78-1720, now pending before this Court on Petition for Writ of Certiorari. These arguments have been dealt with at length by respondent in its Opposition to that petition filed on June 26, 1979.⁴ Briefly, respondent's position is as follows:

A. Pursuant to Ancient and Settled Legal Principles Religious Organizations Hold Their Assets in Trust for Their Religious Purposes, Which Are Also Charitable Purposes, and the State Attorneys General Are Charged With the Responsibility of Enforcing and Supervising Charitable Trusts

The courts of California have always held without exception that the secular affairs of church corporations are subject to supervision by the Attorney General

⁴Respondent hereby requests that this Court take judicial notice of its Brief in Opposition to Petition for Certiorari, filed on June 26, 1979, in Case No. 78-1720.

and the courts. (*In re Metropolitan Baptist Church of Richmond, Inc.* (1975) 48 Cal.App.3d 850; *Whelock v. First Presbyterian Church* (1897) 119 Cal. 477.) In general throughout the United States, religious purposes are regarded as charitable and trustee for purposes are regarded as charitable and trusts for (See IV Scott on Trusts (3d ed.) § 371, p. 2880.)⁵

The state attorneys general are charged with such duties of enforcement and supervision because the fulfillment of the purposes of charitable, including religious, organizations is thought to be of general benefit to society as a whole. In that sense, such entities are trustees of their assets for the public benefit and hold such assets in trust for the religious or charitable purposes set forth in their governing documents. (*Pacific Home v. County of Los Angeles* (1951) 41 Cal.2d 844, at 851-852; *In re Metropolitan Baptist Church of Richmond, Inc.*, *supra*, at 857.) Any diversion of such funds is a breach of trust. (*In re Metropolitan Baptist Church of Richmond, Inc.*, *supra*, at 857; *Holt v. College of Osteopathic Physicians & Surgeons* (1964) 61 Cal.2d 750, at 759-760.) In California and in many other states, the Attorney General is the only party other than corporate directors or trustees (who in this case are the very persons accused of wrongdoing) who has standing to enforce a charitable trust. (*Holt v. College of Osteopathic Physicians & Surgeons*, *supra*, at 755-757; IV Scott on Trusts (3d ed.) § 391, p. 3006.) While the

⁵Indeed, this Court has recognized that the activities of religious organizations are of general benefit to society as a whole, and has on that basis held that a state grant of property tax exemptions to churches does not violate the establishment clause of the First Amendment. (*Walz v. Tax Commission* (1970) 397 U.S. 664, 680.)

public as a whole is the beneficiary of all charitable trusts, members of the public (including in this case members of the Worldwide Church of God) have no clear authority to bring court actions to enforce a charitable trust.

The supervision of charity by state attorneys general goes back more than 200 years. The attorneys general and chancery courts of England had such supervisory powers prior even to the enactment of the English Statute of Charitable Uses in 1601. (Stats. 43 Elizabeth I, c. 4; IV Scott on Trusts (3d ed.) § 368.1, p. 2858, § 391, p. 3002.)

B. The First Amendment Does Not Excuse the Perpetration of Fiscal Fraud in the Name of Religion, nor Does It Shield the Perpetrators From Corrective Action in the Courts

Petitioner argues that the Attorney General's efforts in this action to uncover and correct misappropriation of charitable funds somehow impede impermissibly the free exercise of religion. The premise appears to be that the courts will never be able to distinguish successfully between the financial and business affairs of a church and its charitable trust on the one hand and its spiritual and ecclesiastical affairs on the other. The essence of such an argument is that the business and financial activities of a church at every level are inextricably intertwined with its religious activities and the fulfillment of its religious purposes, that it is impossible for the state to separate the secular activities of the church from its religious activities, and that

state supervision of the church's secular activities is therefore unconstitutional.

That assertion notwithstanding, however, the law is not such an ass as to be unable to distinguish between secular matters (including fiscal fraud) and ecclesiastical belief. In *Cantwell v. Connecticut* (1940) 310 U.S. 296, while invalidating a conviction for alleged unlawful solicitation of funds for religious purposes, this Court nevertheless made it plain that "[n]othing we have said is intended even remotely to imply that, under the cloak of religion, persons may, with impunity, commit frauds upon the public." (310 U.S. at 306.) This Court has also made it clear that the rule prohibiting "entanglement" between church and state does not apply to cases involving "fraud, collusion, or arbitrariness." (See, e.g., *Gonzales v. Roman Catholic Archbishop* (1929) 280 U.S. 1, 16; *Maryland and Virginia Eldership v. Church of God* (1970) 396 U.S. 367, concurring opinion of Brennan, J., fn. 3, at 369.)

C. The Purpose and Effect of the Attorney General's Enforcement Action Is to Halt and Correct Fraudulent Diversion of Charitable Assets, Not to Interfere With Any Religious Doctrine or Practice

The Second Amended Complaint in this action alleges that the individual defendants have fraudulently diverted assets of the three nonprofit charitable corporations to their own benefit. These defendants, Mr. Rader a principal among them, make no claim that fraudulent diversion is permitted by church doctrine or practice,

and of course any such claim would of itself be fraudulent. Thus, the purpose of this lawsuit, to halt and correct fraudulent diversion, does not impact in any way upon any religious doctrine or practice. Therefore, cases involving government regulations or actions which adversely affect religious doctrine or practice are not in point.⁶

Obviously, California, as well as other states, has a strong policy forbidding fraudulent diversion of corporate funds, whether or not the affected corporation is a church. This is a neutral policy of law and is applicable in the same manner to religious corporations as it is to secular ones. (See *Presbyterian Church v. Hull Church* (1969) 393 U.S. 440 at 449.)

Much of the alleged fraud in this case consists of transactions between Mr. Rader or businesses controlled by him and the three nonprofit charitable corporations.⁷ Under these circumstances the records of the questioned transactions are either in the possession of Mr. Rader or the charities. With few exceptions, there are no other sources for this evidence. Thus, Mr. Rader's deposition is required both to discharge his obligation to account for his use of charitable

⁶Even governmental action which does have some adverse impact upon religious practice will not violate the First Amendment if its purpose and primary effect is to advance a rational and legitimate secular governmental purpose. (See *Johnson v. Robison* (1973) 415 U.S. 361, 384; *Gillette v. United States* (1971) 401 U.S. 437, 462; *Braunfeld v. Brown* (1961) 366 U.S. 599, 607.)

⁷Such self-dealing transactions by fiduciaries are absolutely prohibited by California law. (See California Civil Code Sections 2228-2235.) This prohibition applies not only to trustees of charitable trusts but to officers and directors of charitable corporations as well. (See, e.g., *People of the State of California v. Larkin* (N.D. Cal. 1976) 413 F.Supp. 978, 981-82; *Lynch v. John M. Redfield Foundation* (1970) 9 Cal.App.3d 293, 301.)

assets and to determine the true nature and extent of these questionable transactions. Respondent submits that Mr. Rader cannot be allowed to hide his obligation to account behind the First Amendment.

II

The State Court Order Requiring Petitioner to Attend His Deposition and Give Testimony Does Not Violate His Rights Under the Fifth Amendment

Petitioner's primary argument is that to compel him to testify at his deposition in this civil action would violate his rights under the Fifth Amendment. Petitioner contends that this is so because (1) there are pending criminal investigations of petitioner by other law enforcement agencies, and (2) the investigation undertaken by the Attorney General is itself criminal in nature, has focused on petitioner, and that his deposition is a "custodial interrogation." Petitioner therefore concludes that the *Miranda* warning given him at his deposition was necessary and proper, and that he now has a right to remain silent.

Respondent submits that these arguments are devoid of merit.

A. The Privilege Against Self-Incrimination and the Right to Remain Silent

Both the Fifth Amendment to the Constitution of the United States and the Constitution of the State of California (Art. I, § 15) declare, in nearly identical language, that no person shall "be compelled in any criminal case to be a witness against himself." Since at least 1892 (*Counselman v. Hitchcock* (1892) 142 U.S. 547, 562) that language has been construed to embody two distinct privileges: (1) the privilege

against self-incrimination, that is, the right not to disclose incriminating matters, which is available to every natural person in both civil and criminal proceedings (*In re Gault* (1967) 387 U.S. 1, 49), and (2) the right to remain silent that is, the right not to be called as a witness and not to testify, which is available only to a defendant in a criminal proceeding (*Boyd v. United States* (1886) 116 U.S. 616) or to one who is the object of custodial interrogation (*Miranda v. Arizona* (1966) 384 U.S. 436.)

The federal courts have been uniform in upholding this distinction; that although a person cannot be compelled to give self-incriminating testimony, a witness other than an accused must, if properly summoned, appear and be sworn. The privilege against self-incrimination is available to him only as a witness, and cannot be extended so as to excuse him from appearing. The proper course is for him to wait until the propounding to him of a question which tends to incriminate him, and then claim the privilege and decline to answer. (*State v. Parham* (1974 Iowa) 220 N.W.2d 623, 626; 81 Am.Jur.2d, Witnesses, § 30, *et seq.*, § 36.)

"No person other than an accused in a criminal prosecution has any blanket right to refuse to testify. Accordingly, all other persons claiming the privilege against self-incrimination must claim the privilege a question at a time in response to particular queries." (C. Antieau, *Modern Constitutional Law* (1969) § 2:28, vol. 1, pp. 186-187.)

In *Garner v. United States* (1974) 501 F.2d 228 (aff'd. 424 U.S. 648), the defendant in a criminal prosecution for violation of various federal gambling statutes contended on appeal that the introduction into evidence of his income tax returns (which stated that

he derived income from gambling and wagering) violated his privilege against self-incrimination. The Court of Appeal rejected this contention, holding that at the time the defendant had made the statements on his tax return, he was a witness and should have asserted his privilege at that time. The court stated:

"At issue is the nature of the privilege against self-incrimination guaranteed by the Fifth Amendment. . . . The privilege is now available to a potential criminal defendant well before proceedings actually begin as well as to a witness in criminal, civil, grand jury, or legislative proceedings. However, the scope of a defendant's privilege is greater than that he would enjoy if he were only a witness. Not only may a defendant refuse to answer questions but he is also entitled not to be called as a witness at his trial. The witness, on the other hand, has no right to be immune from inquiries though he may decline to respond to them by claiming his privilege. This differing treatment results from the nature of the privilege. See C. McCormick, *Evidence* §§ 130, 136 (2d, 1972)." (Citations omitted.) (*Garner v. United States*, *supra*, at 237-238. See also *Alston v. United States* (D.C. App. 1978) 383 A.2d 307, 313.)

In California, these two separate privileges have been codified in California Evidence Code sections 930 and 940.⁸ In *People v. Welch* (1967) 255 Cal.App.2d

⁸California Evidence Code sections 930 and 940 provide as follows: Section 930 "To the extent that such privilege exists under the Constitution of the United States or the State of California, a defendant in a criminal case has a privilege not to be called as a witness and not to testify." Section 940 "To the extent that such privilege exists under the Constitution of the United States or the State of California, a person has a privilege to refuse to disclose any matter that may tend to incriminate him."

455, the California Court of Appeal addressed itself to the distinction between the two privileges, stating:

“The federal and state Constitutions in identical language declare that no person shall ‘be compelled in a criminal case to be a witness against himself.’ [Citations.] In California, by statutory declaration, to the extent conferred by either of these constitutional provisions, a defendant in a criminal case has the privilege not to be called as a witness and not to testify (Evid. Code § 930); and every person has the privilege to refuse to disclose any matter that may tend to incriminate him. (Evid. Code § 940.) The constitutional provisions generally have been described as conferring a right to remain silent. They are exceptions to the general rule that no person may refuse to testify as a witness. (Evid. Code § 911.) The privilege not to be called as a witness may be asserted only by a defendant in a criminal proceeding. [Citations.] On the other hand, the privilege not to disclose any incriminating matter may be asserted by any person either in a civil or criminal proceeding [Citations] or otherwise.” (255 Cal.App.2d at 460. See also *People v. Frohner* (1976) 65 Cal.App.3d 94, 105; *People v. Shipe* (1975) 49 Cal.App.3d 343, 349; *People v. Chandler* (1971) 17 Cal.App.3d 798, 804-805.)

B. Petitioner's Contentions

In refusing to sit for his deposition, petitioner Rader seeks to invoke the right of a defendant in a criminal proceeding to remain silent. Petitioner first argues that he should be accorded that right because, he alleges, he is the object of pending criminal investigations by other prosecutorial agencies.

Respondent submits that even if true, the fact that other prosecutorial agencies may be conducting *investigations* of petitioner which are criminal in nature is irrelevant. Unlike the defendants in the cases cited in support of his position, petitioner Rader is not under any criminal *indictment*; thus, he is not the object of any criminal proceedings. Nor is Rader's position in the instant case equivalent to that of the accountant Smith in the cited case of *United States v. Hankins* (5th Cir. 1978) 565 F.2d 1344. In holding that Smith had a right not to testify, the court in *Hankins* took pains to point out that he had no potential liability. Smith was not the target of the civil tax investigation. His *only* potential liability was criminal. (*United States v. Hankins, supra*, at 1351.)

Petitioner also argues that he should be accorded the right to remain silent because, he alleges, the Attorney General's investigation is itself criminal in nature, that it has “focused” on petitioner, and that his deposition is a “custodial interrogation” in the *Miranda* sense.

As previously set forth, the action for an accounting underlying the instant petition is civil in nature. The investigation being conducted by the California Attorney General in connection with that lawsuit is of alleged violations of civil law. The Attorney General seeks to enforce the rights of the public, as the ultimate beneficiaries of charitable trusts, against the trustees thereof for any breach by them of their fiduciary duties. In attempting to conduct discovery in this matter, the state seeks nothing more than to depose petitioner Rader, who is an officer, director and/or trustee of the charities here involved.

Petitioner Rader has not been and is not now the focus of any criminal investigation by the California

Attorney General. In *Miranda v. Arizona* (1966) 384 U.S. 436, this Court specifically defined "focus" as "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (384 U.S. at 444. See also *Beckwith v. United States* (1976) 425 U.S. 341, 347.) That is just not the situation here.

Finally, petitioner argues that the taking of his deposition in this civil case is equivalent to "custodial interrogation" within the scope of this Court's holding in *Miranda v. Arizona, supra*. A recent case rejecting a similar contention is *Beckwith v. United States* (1976) 425 U.S. 341. In that case, prior to his trial on a charge of attempted federal income tax evasion, the defendant moved to suppress statements which he had made to special agents of the Internal Revenue Service at a noncustodial interview that had been conducted in a private home. The defendant argued that the government's investigation was criminal in nature, that it had focused on him, and that he was therefore entitled to and should have been given the warnings mandated by *Miranda*. The District Court rejected the defendant's contention, finding that there was no evidence of any custodial circumstances compelling the *Miranda* warnings; the Court of Appeals affirmed. This Court also affirmed, holding that (1) the Internal Revenue Service agents were not required to give the defendant a *Miranda* warning in their interview of him because he was not in custody; and (2) the statements made by the defendant in this noncustodial interview were admissible against him, even though he was the "focus" of a criminal investigation for tax fraud, because the *Miranda* requirements apply

only with regard to "custodial interrogation," that is, questioning initiated by law enforcement officers *after* a person is taken into custody or otherwise deprived of his freedom of action in a significant way. (*Beckwith v. United States, supra*, 344-347.)

In the instant case, petitioner Rader is a licensed attorney and a certified public accountant. He is well represented by attorneys in this matter. In this context, his assertion that the taking of his deposition is equivalent to a custodial interrogation in the *Miranda* sense is ludicrous. Petitioner is a witness in a civil proceeding; his only proper course is to raise his privilege against self-incrimination, if necessary, on a question-by-question basis at his deposition.

Conclusion

The purpose and effect of the investigation and lawsuit being prosecuted by the State of California in Civil Action No. C 267607 is to prevent and correct fiscal fraud in the administration of three nonprofit charitable corporations, one of which is a church. Fiscal fraud is not a part of any religious doctrine or practice, and its prevention and correction cannot interfere with such doctrine or practice.

Further, the state's Action is civil in nature, not criminal, and petitioner is not the focus of any criminal investigation by the State of California. Petitioner has not been charged with any crime; he is not a criminal defendant. Thus, while petitioner clearly may assert the privilege against self-incrimination with respect to any particular question the answer to which may tend to incriminate him, he cannot assert as a bar to giving his deposition the right of a criminal defendant to remain silent.

For the foregoing reasons, respondent respectfully prays that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

GEORGE DEUKMEJIAN,
Attorney General,

LAWRENCE R. TAPPER,

JAMES M. CORDI,

WILLIAM S. ABBEY,

LAUREN R. BRAINARD,

Deputy Attorneys General,

Counsel for Respondent.

APPENDIX A.

Second Amended Complaint for (a) Accounting, (b) Removal of Trustees, (c) Equitable Relief, (d) Appointment of a Receiver, and (e) Injunctive and Other Appropriate Relief.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff, v. Worldwide Church of God, Inc., a California Nonprofit Corporation, Ambassador College, Inc. a California Nonprofit Corporation, Ambassador International Cultural Foundation, Inc., a California Nonprofit Corporation, Worldwide Advertising, Inc., a California Corporation, Gateway Publishing, Inc., a California Corporation, Mid-Atlantic Leasing, a partnership, Excelsior Leasing, a Corporation, Environmental Plastics, Inc., a Texas Corporation qualified to do business in California, Herbert W. Armstrong, Stanley R. Rader, Osamu Gotoh, Robert Kuhn, Raymond L. Wright, Henry Cornwall, Ralph Helge, the Accounting Firm of Rader, Cornwall, Kessler and Palazzo, and Does 1 through 100, Inclusive, Defendants. No. C 267-607.

AS A FIRST CAUSE OF ACTION FOR ACCOUNTING, PLAINTIFF ALLEGES:

1. George Deukmejian is the duly constituted Attorney General of the State of California, and as such is charged with the supervision of all charitable organizations within this state and with the supervision of trustees and fiduciaries who hold or control property in trust for charitable and eleemosynary purposes. This action was originally brought by and on behalf of the People of the State of California on the relation

of individuals who had been granted leave to sue by the Attorney General. Its purpose is to correct the abuse of charitable trusts. The six individually designated relators have since withdrawn, and sole responsibility for the action now rests with the Attorney General.

2. Defendant Worldwide Church of God, Inc. (hereinafter the Church) is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The Church was organized exclusively for charitable and religious purposes, and all of its assets are dedicated irrevocably to those purposes such as are set forth in its articles of incorporation a copy of which is attached hereto and incorporated herein as Exhibit 1. At all times since its incorporation in 1934 it has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

3. Defendant Ambassador College, Inc. (hereinafter the College), is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The College was organized exclusively for educational (charitable) purposes, and all of its assets are dedicated irrevocably to those purposes such as are set forth in its articles of incorporation, a copy of which is attached hereto and incorporated herein as Exhibit 2. At all times since its incorporation in April 1951 it has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is

now Article XIII, section 4(b) of the California Constitution.

4. Defendant Ambassador International Cultural Foundation, Inc. (hereinafter Foundation), is a California corporation created and existing under the California general nonprofit corporation law. Its principal place of business is in the County of Los Angeles, California. The Foundation was organized exclusively for cultural (charitable) purposes, and all of its assets are dedicated irrevocably to those purposes, such as are set forth in its articles of incorporation, a copy of which is attached hereto and incorporated herein as Exhibit 3. At all times since its incorporation in March 1975 the Foundation has been exempted from taxation by the State of California under Revenue and Taxation Code section 23701(d), and what is now Article XIII, section 4(b) of the California Constitution.

5. By reason of the exemption from tax of the property of the Church and the College and the Foundation, as above alleged; and also by reason of the fact that all donations and contributions to the Church, the College and the Foundation have been deductible from income by the donors and contributors for purposes of computing their federal and state income taxes; plaintiff is informed and believes, and therefore alleges, that the Church, the College and the Foundation have enjoyed substantial public subsidies amounting over the last ten years to more than \$150,000,000.

6. Defendants Stanley R. Rader, Herbert W. Armstrong, Ralph Helge, Henry Cornwall, Osamu Gotoh, Robert Kuhn, Raymond L. Wright, and Does 1 through 50 are and at all relevant times have been either officers, directors, or full-time employees of one or

more of the above-named charitable entities (hereinafter referred to collectively as the Church, the College and the Foundation) or one or more of the following named for-profit defendants, or both. All of the acts herein complained of have been done with their knowledge and complicity, and under their supervision. In addition, each individual defendant is legally responsible for the act and omissions of his co-trustees.

7. Plaintiff is informed and believes, and on that basis alleges, that defendants Worldwide Advertising, Inc. and Gateway Publishing, Inc. are California corporations; that Does 51 through 100 are corporations, partnerships or other business entities; that Environmental Plastics, Inc. is a Texas corporation qualified to do business in California; that Rader, Cornwall, Kessler and Palazzo is an accounting firm formed either as a California professional corporation or a partnership; that Mid-Atlantic Leasing is a corporation or partnership; that Excelsior Leasing is a Pennsylvania corporation qualified to do business in California; that the above are hereinafter referred to collectively as the for-profit defendants. Plaintiff is informed and believes, and on that basis alleges, that each of the for-profit defendants is owned or controlled by one or more of the officers or directors of the Church, the College or the Foundation, including particularly the defendant Stanley R. Rader; that funds and property contributed to the charitable entities are freely transferred among them and the for-profit defendants; that financial and business records of the charitable entities have been and continue to be in the custody and possession of the for-profit defendants; and that the unity of record ownership and actual control among the charitable entities and the for-profit defendants,

and the course of dealing between them, has been for many years and is now such that for all purposes of this accounting, it would be unjust and inequitable to recognize any separate existence among them at all. The exact status and constitution of the for-profit defendants, and their precise relationship with the charitable entities, are matters not known to plaintiff at this time, but are peculiarly within the knowledge of the defendants; and plaintiff will ask leave of the Court to amend this Complaint to show their true status and constitution, and the exact nature of their relations with the charitable entities when the same have been ascertained.

8. The true names and capacities of defendants Doe (whether individual, corporate, associate or otherwise) and the true nature of their relationship with the other defendants, is presently unknown to the plaintiff, but is peculiarly within the knowledge of the individual named defendants. Plaintiff will ask leave of the Court to amend this complaint to show the true names and capacities of the defendants Doe, and the true name of their relationship, when the same have been ascertained.

9. Defendants HERBERT W. ARMSTRONG and STANLEY R. RADER are and all times pertinent to this Complaint have been in full and complete control of the Church, the College, the Foundation, and all of their affairs. HERBERT W. ARMSTRONG is and has been Pastor General of the Church ever since its formation, and has been an officer and director of the College and Foundation as well as the Church at all times since their formation. Defendant Stanley R. Rader has acted as general counsel and chief adviser of the three entities for the past fifteen years, and

for the past four years has acted and is presently acting in at least the following capacities: as director, executive vice-president, executive director, vice-president for financial affairs, secretary-treasurer and general counsel.

10. The Church, the College and the Foundation, as well as the individual named defendants (including Does 1-50), hold and are responsible for the assets of the three charitable entities, as trustees, subject to supervision by the Attorney General and ultimately by this court. The ultimate beneficiary in each instance is the public which benefits generally from all charitable endeavors. None of the defendants has or may legally have any proprietary interest in the assets and properties of the Church, the College or the Foundation, nor in their books and records.

11. The Church, the College, the Foundation and the individual named defendants as their officers and directors are required by law to account to the public and this court for all funds received, expended, or held by the three entities. Notwithstanding this duty to account, and repeated requests by plaintiff and members of the Church, these defendants have failed and refused, and still fail and refuse, to make any such accounting at all.

12. The need for an accounting by defendants in this case is particularly acute for each of the following reasons:

(a) Plaintiff is informed and believes, and on that basis alleges, that for a period exceeding ten years the individual and for-profit defendants (including Does 1-100), acting in concert with and under the direction of defendants Armstrong and Rader, have been and are siphoning off and

diverting to their own use and benefit assets and properties of the Church, the College and the Foundation, on a massive scale increasing in the last several years to millions of dollars per year, and causing substantial fiscal deficits in their operation.

(b) Although much of the funding for the Church, the College and the Foundation is generated through contributions and other payments and tax subsidies provided by the public as a whole, a major source of funds for the Church has come from tithing of its members. As Pastor General of the Worldwide Church of God, and as the self-proclaimed Ambassador of God on earth, Herbert W. Armstrong has directed all members of the Church to contribute the first ten percent (10%) of their gross income. Failure to do so, according to Armstrong's published disseminations to the members, is "... STEALING from GOD ... and is SIN, which will cost you your SALVATION." By reason of such representations and exhortations, a special fiduciary relationship has been created in which Mr. Armstrong, Mr. Rader and the other individual defendants owe the highest duty of accountability, not merely to the general public which is interested in preventing fraud, but also the members and former members who have not only given their money but have also placed their trust in the defendants to use it strictly for God's work.

(c) In the solicitation of funds, defendant Armstrong has not always been candid. From time to time throughout the past ten years the Church has sent out special and urgent requests for con-

tributions to be made at great personal sacrifices to the donors. Attached hereto and incorporated herein as Exhibit 4 is one such request dated March 30, 1970. The letter speaks of a "tight money situation" requiring cutbacks in Church salaries, publications and operating expenses in all departments of the "Work;" it states that "God's Work" needs "IMMEDIATE CASH"; and on the suggestion of ". . . Mr. Rader, our legal counsel and financial adviser," members are asked to borrow whatever they can, so long as they do not lower the income for the "Work" through the rest of the year. The true nature of the alleged fiscal emergency is exemplified by two purchase orders attached hereto and incorporated herein as Exhibit 5. Mr. Armstrong's letter of March 30, 1970, failed to disclose, among other pertinent facts, the purchase for his Pasadena residence of a \$6,090.00 crystal candelabra on January 2, 1970, and French porcelain vases for \$2,079.00 on March 31, 1970.

(d) In addition to the first 10% tithe (for God), and a second 10% tithe (to provide for the member's expenses at the annual Festivals), there is a third tithe imposed by the Church on its members consisting of ten percent (10%) of their gross income every third year. Throughout the past ten years this contribution has been expressly solicited as a special fund for widows and orphans. A trust has been imposed on these funds which requires that they be used only for such purposes. Plaintiff is informed and believes and thereupon alleges that an accounting has never been rendered of the receipt and disposition

of these funds, and that they have been diverted to purposes other than those for which they were solicited and donated.

13. Because the named individual defendants are now, and at all times pertinent to this action have been in full, effective and exclusive control of all the property, assets, records and administrative facilities of the Church, the College and the Foundation; and because they have consistently denied and still presently deny meaningful access to such records by the Attorney General of the State of California, plaintiff has no alternative but to make many of the allegations of this complaint on information and belief. Plaintiff will ask leave of the Court to amend this complaint in all pertinent respects when the particular facts concerning the actions complained of have been ascertained.

AS A SECOND CAUSE OF ACTION FOR REMOVAL OF INDIVIDUAL DEFENDANTS AS TRUSTEES, AND FOR INJUNCTION, PLAINTIFF ALLEGES:

14. Paragraphs 1 through 13 of the First Cause of Action are incorporated by reference into and hereby made a part of this Second Cause of Action.

15. Plaintiff is informed and believes and thereupon alleges that defendant Herbert W. Armstrong is 86 years of age; that he has suffered a heart attack; that he no longer resides in California; and that he is not in daily control of the operations of the Church, the College or the Foundation. The exact nature and extent of his involvement and participation in the diversion of charitable funds hereinabove alleged, either at the present time or in the past, is currently unknown to plaintiff, but is peculiarly within the knowledge of the defendant Armstrong and the other defend-

ants. Plaintiff will ask leave to amend his complaint to show the true facts when the same have been ascertained.

16. Plaintiff is further informed and believes, and thereupon alleges, that for all practical purposes, the financial affairs of the Church, the College and Foundation are now and have for some time been controlled by the defendants Stanley R. Rader, Osamu Gotoh, Ralph J. Helge, Robert Kuhn, Raymond L. Wright, and Henry Cornwall.

17. In addition to his official capacities described above in paragraph 9, Rader has claimed additional power and authority since January 4, 1979 by reason of a directive purportedly issued on that day by the defendant Armstrong, a copy of which is attached herein and incorporated herein as Exhibit 6.

18. Since this action was filed in January 1979, defendants Rader and Helge have done everything within their power to deny plaintiff access, not only to the books and records of the Church, College and Foundation, but to individuals with knowledge of the operation and financial affairs of said charitable entities.

19. Plaintiff has been endeavoring since January 31, 1979, when this court first so ordered, to examine Rader under oath in deposition concerning his fiduciary relationship to the Church, College and Foundation, and the manner in which he has carried out his responsibilities. Rader failed and refused to appear until further ordered to do so on April 3 and 4, at which time he refused to answer proper questions, and ultimately announced unilaterally that he was leaving the deposition and would not participate any further therein. A copy of the transcript of Rader's deposition is being lodged with this court in connection with plaintiff's

Motion to Compel Discovery, and is hereby incorporated by reference and made a part of this complaint.

20. By reason of each and all of their acts and omissions hereinabove related, the defendants Rader Gotoh, Kuhn, Wright, Cornwall and Helge have failed and refused to comply with the trust which they have assumed; each of them has departed and caused the Church, College and Foundation to depart from the charitable purposes he and they were bound to serve; and each of said defendants should be removed from all responsibility in connection with the Church, College and Foundation.

21. Further, plaintiff is informed and believes, and therefore alleges that the said defendants have caused the Church, College and Foundation to enter into various purported contracts of employment and other contracts with each of the said trustees, providing for compensation and reimbursement of expenses. Plaintiff alleges that all of said contracts were entered into by the Church, College and Foundation without sufficient consideration and under undue influence, and without proper corporate authority; and alleges that each of said contracts should be cancelled and determined to be null and void. A copy of the Employment Contract of Stanley R. Rader dated July 30, 1976 is attached hereto, marked Exhibit 7, and is incorporated herein by this reference.

22. Plaintiff further alleges that each of the defendants Rader, Gotoh, Kuhn, Wright, Cornwall and Helge should be perpetually enjoined and restrained from serving as officers or directors, or any other capacity, with respect to the Church, College or Foundation or any other California charitable or trust or organization.

AS A THIRD CAUSE OF ACTION FOR ORDERS REQUIRING COMPLIANCE BY THE CHURCH, COLLEGE AND FOUNDATION WITH CALIFORNIA LAW PERTAINING TO NONPROFIT CORPORATIONS ORGANIZED FOR CHARITABLE PURPOSES, OR FOR OTHER APPROPRIATE RELIEF, PLAINTIFF ALLEGES:

23. Paragraphs 1 through 13 of the First Cause of action, and paragraphs 15 through 22 of the Second Cause of Action, are hereby incorporated by reference into and hereby made a part of this Third Cause of Action.

24. By virtue of the facts hereinabove alleged, the defendant charitable entities have claimed the benefits of incorporation as nonprofit corporations organized for charitable purposes under the laws of the State of California which benefits include among others the substantial tax subsidies and exemptions hereinabove referred to; but the said charitable entities have failed in numerous respects to comply their obligations under said laws, as follows:

(a) Claiming that their organization is "hierarchical," the charitable entities have never been subject to the governance of any board of directors, board of trustees or other independent body, authorized and empowered to supervise and preserve charitable funds collected and held by them as required by law;

(b) Notwithstanding that the bylaws adopted by the charitable entities called for a vote of the members on numerous matters of importance, including amendment to the articles and bylaws, disfellowshipment of members and other matters, no member of said charitable entities has ever

voted or been permitted or requested to vote on any matter and no vote of the members has ever been held on any subject. In this connection, plaintiff is informed and believes, and thereupon alleges, that although statements were filed with the Secretary of State reflecting a purported vote of the membership on certain amendments to articles of incorporation of the defendant Church, no such vote and no such election was ever held, as the defendants herein are well aware.

(c) The defendants have taken the position that their bylaws may be altered or entirely disregarded whenever it suits their purposes, since said bylaws are "viewed only as guidelines, which are subject to spiritual interpretations (by defendants) and are subordinate to the higher law of God." A copy of the Declaration of defendant Helge, dated January 11, 1979 and filed with this court on or about January 12, 1979, is attached hereto as Exhibit 8 and is hereby incorporated by reference and made a part of this complaint.

(d) Claiming that all decisions of the defendants Armstrong and Rader are "religious" or "spiritual," including all decisions affecting the disposition of charitable trust funds collected and held by the Church, College and Foundation, defendants have taken the position that all of their financial decisions and expenditures, including the disposition of funds for their personal use and benefit, is protected and exempted from review or scrutiny by anyone, including this court, by virtue of the First Amendment; and have thereby claimed and continue to claim that they are entitled to dispose of charitable funds as they please.

25. The defendants Church, College and Foundation should be required by this court to comply with their obligations under the laws of the State of California pertaining to nonprofit corporations organized for charitable purposes in all respects, including among others the following: (a) The Church, College and Foundation should be required to select a board of directors, board of trustees, or other board authorized and empowered to oversee and supervise its financial affairs (as distinguished from its ecclesiastical or spiritual affairs), in such manner as to provide reasonable assurance that the charitable trust funds collected and held by such charitable entities will be applied solely to the charitable uses to which they were donated, and will not be diverted or misapplied for the personal benefit of any individual, or for any other improper purposes; (b) The Church, College and Foundation should be required to take such steps as may be necessary or appropriate to keep and maintain proper records of their financial and business transactions, and to prepare and cause to be rendered periodic accountings of their financial and business affairs as required by law; (c) The Church, College and the Foundation should be required to take such steps as may be necessary or appropriate to prevent the dissipation of charitable trust funds in the future, and to recover such charitable trust funds as have previously been allowed by them to be dissipated or diverted by improper purposes.

26. If and to the extent the Church, College and Foundation cannot be made to comply with their legal obligations in exchange for obtaining the benefits of their status as charitable California corporations, the court should make such other orders and grant such

other relief as may be necessary or appropriate under the circumstances to preserve the charitable funds which have been accumulated by them, and which are presently entrusted to their care and custody.

AS A FOURTH CAUSE OF ACTION FOR RECEIVER, PLAINTIFF ALLEGES:

27. Paragraphs 1 through 13 of the First Cause of Action and Paragraphs 15 through 22 of the Second Cause of Action and Paragraphs 24 through 26 of the Third Cause of Action, are hereby incorporated by reference into and made a part of this Fourth Cause of Action.

28. Based on limited and sporadic statements issued by defendants to the membership of the charitable entities, plaintiff is informed and believes, and on that basis alleges, that they receive approximately \$70 million per year in contributions, and that they have a net worth of approximately \$80 million. Most of their net worth is held in the form of real estate.

29. Plaintiff is informed and believes, and on that basis alleges, that between January 1, 1975 and the present date, the charitable entities have spent and continue to spend at least \$1 million more each year than they receive in contributions and, for that reason, have been forced to liquidate some of their holdings in order to defray their current expenditures. All the excess of expenditures over receipts is attributable to the individual defendants' pilfering of the revenues of the charitable entities and their misappropriation of charitable assets to their own personal use and benefit, which pilfering and misappropriation continues to this very day on a massive scale. So long as the individual named defendants remain in full, effective and exclusive control of the business affairs of the charitable entities,

they alone will continue in the future, as they have in the past, to determine the nature and extent of all their expenditures.

30. Plaintiff is informed and believes, and on that basis alleges that during the last six months, as part of their program of misappropriating the assets of the charitable entities to their own use and in order to facilitate said misappropriation, the individual defendants have been liquidating the properties of the charitable entities on a massive scale; and that in Southern California alone, over twenty parcels of property belonging to one or more charitable entities have been sold in the last year, many of them at prices well below their market value.

31. Plaintiff is further informed and believes, and on the basis alleges that one of the largest properties of the College is a 1600-acre parcel in Big Sandy, Texas, which is worth substantially in excess of \$10.6 million; yet the individual defendants have been attempting to sell the aforementioned parcel to a third party for approximately \$10.6 million; and these defendants have attempted to conceal the true worth of the Big Sandy property, and have instead published false statements, known by them to be false, to the effect that the property aforesaid is worth only about \$8 million. All these statements and activities are part of their effort to convert the assets of one or more of the charitable entities into a form in which they may be more easily appropriated to the personal use and benefit of the individual defendants. Further, plaintiff is informed and believes that the defendants have established no procedures or safeguards to ensure that the proceeds of sale of the Big Sandy property, which belong to the College and which ought to be used

exclusively for charitable and educational purposes, will be applied to that charitable use; but instead, defendants have announced publicly their intention to "get out of the college business," and to divert the proceeds of said sale to the Church and the Foundation, and to uses other than those for which they are entrusted.

32. Plaintiff is further informed and believes, and thereupon alleges, that the individual named defendants, in an effort to frustrate discovery of their wrongdoing and to obscure the facts, have caused and are causing the written records of their dealings to be removed from the Pasadena offices of the defendant corporations, and to be shredded and destroyed; and that if said removal and destruction are allowed to continue, it may never be possible to develop a true and complete accounting of the finances of the charitable entities during the time period complained of.

33. Since this action was commenced on January 2, 1979, and after a receiver was appointed herein, the individual defendants have pursued a course of conduct designed to divert donations, funds and assets of the charitable entities to themselves at Tucson, Arizona and elsewhere; and thereafter to apply said funds for their personal use and benefit in various ways, including the appointment of numerous firms of attorneys to represent their personal interest while ostensibly acting as counsel for the charitable entities. In this regard, the individual defendants have purported to effect an amendment to the bylaws since the commencement of this action, granting them alleged indemnification for their legal expenses, not only in connection with the instant action and any other civil action which has been instituted by them or against

them in the state and federal courts, but also for any expenses they may incur in defending against criminal charges arising out crimes or alleged crimes committed by them against the charitable entities (as set forth at pages 11 and 12 of the purported bylaws attached to the Declaration of Helge, Exhibit 8 to this complaint). Plaintiff is further informed and believes, and thereupon alleges that the defendants have already paid or incurred legal expenses in connection with the present action and related litigation of nearly \$1 million, all of which they have paid or intend to pay out of charitable funds properly the property of the charitable entities herein.

34. The appointment of receiver pendente lite for the charitable entities is necessary forthwith to prevent the continued misappropriation of charitable funds and assets to the personal use and benefit of the individual defendants; to halt the imminent and massive selling-off of valuable properties at prices well below their market value; and to prevent the further destruction of financial and business records of the charitable entities and to conduct an independent investigation of claims which the charitable entities may have against the individual named defendants and others, and thereafter to file and pursue such suits and actions on behalf of the charitable entities as may be appropriate.

AS A FIFTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF PLAINTIFF ALLEGES:

35. Paragraphs 1 through 13 of the First Cause of Action, 15 through 22 of the Second Cause of Action, 24 through 26 of the Third Cause of Action, and 28 through 33 of the Fourth Cause of Action are hereby incorporated into and made a part of this Fifth Cause of Action.

36. The Receiver will require access to the books and records, and to the administrative facilities, of the charitable entities in order to discharge his duties, and in order to protect and preserve their assets pendente lite; but the individual named defendants threaten to deny such access to any person other than themselves, and have demonstrated an intention to remove and destroy said books, records, and facilities, rather than to let any other person see them; and unless enjoined and restrained from doing so by this Court, they will do so, and will not yield up the said assets and records to the receiver.

37. The individual named defendants are engaged in an on-going program of liquidation of charitable assets, and have already entered into agreements to sell many of said properties at prices well below their market value; and unless they and those with whom they deal are enjoined and restrained from doing so by this Court, they will sell, transfer, mortgage, and encumber said properties without providing any safeguards for their preservation and use for the charitable purposes impressed on such assets.

AS A SIXTH CAUSE OF ACTION FOR ACCOUNTING AGAINST DEFENDANT RADER, CORNWALL, KESSLER and PALAZZO, PLAINTIFF ALLEGES:

37. Paragraphs 1-13 of the First Cause of Action are incorporated by reference into and hereby made a part of this Sixth Cause of Action.

38. Plaintiff is informed and believes and on that basis alleges, that at all times relevant to this complaint, defendants Rader and Cornwall held the beneficial ownership of a majority of, and exercised actual control

over, defendant Rader, Cornwall, Kessler and Palazzo, which, until recently was known as Rader, Cornwall and Kessler.

39. Plaintiff is informed and believes and upon that basis alleges that at all times relevant to this complaint defendant Rader, Cornwall, Kessler and Palazzo acted as the outside accountants for the charitable entities; and in such capacity produced certified financial statements for Worldwide Church of God and Ambassador College, in which they rendered opinions as certified public accountants that such financial statements presented fairly the financial positions of those corporations. Plaintiff is informed and believes and on that basis alleges that as accountants for the charitable entities, defendant Rader, Cornwall, Kessler and Palazzo held a fiduciary position of great trust and confidence vis a vis such charitable entities in the course of which Rader, Cornwall, Kessler and Palazzo rendered financial advice to the management of such charitable entities. In addition plaintiff is informed and believes and on that basis alleges that at all times relevant to this complaint Rader was intimately involved with the management of the charitable entities as personal financial advisor to defendant Herbert W. Armstrong and as attorney for the charitable entities. As a consequence of its assumption of such fiduciary position defendant Rader, Cornwall, Kessler and Palazzo and its partners or shareholders were bound to avoid transactions in which their personal financial interests would conflict with those of the charitable entities.

40. Plaintiff is informed and believes and on that basis alleges that defendants Rader and Cornwall used their positions of trust and confidence with the charitable entities to divert assets of those entities to their

benefit, in an amount unknown to plaintiff, by devising, recommending and implementing unfair and fraudulent business transactions between the charitable entities and themselves personally, or between the charitable entities and various of the for-profit defendants in which either or both of them had ownership interests, or from which they otherwise derived financial benefit, which transactions resulted in personal profit to Rader and/or Cornwall. Plaintiff is informed and believes and on that basis alleges that Rader and Cornwall accomplished the said diversions of charitable assets while acting or purporting to act for and on behalf of defendant Rader, Cornwall, Kessler and Palazzo as partners and/or members thereof.

41. The full nature and extent of the dealings between defendant Rader, Cornwall, Kessler and Palazzo and the charitable entities are not now known to plaintiff, but are peculiarly within the knowledge of defendants. Plaintiff will ask leave of court to amend this complaint to show the exact nature and extent of such dealings when the same have been ascertained.

42. Rader, Cornwall, Kessler and Palazzo are legally required to account to plaintiff for all of the said dealings, and transactions between itself and/or its partners, and the charitable entities, and may be surcharged and held liable for any breaches of trust or diversions of charitable assets resulting from such dealings or transactions.

WHEREFORE PLAINTIFF PRAYS:

1. For an order requiring defendants to make a full and complete accounting to this Court of the affairs of the defendant charitable entities from January 1, 1975 through the date of said accounting; and for a further accounting of the third tithe, and of

all transactions between any of the defendant charitable entities and any of the individual defendants or the defendant for-profit entities, from January 1, 1970 through the date of said accounting;

2. For an order removing the defendants Rader, Gotoh, Kuhn, Wright, Cornwall, and Helge from holding any office or employment in or under the defendant charitable entities, and cancelling and nullifying any contracts of employment which which may have heretofore been entered between them and said entities and further enjoining and restraining said defendants from holding any office of employment under the said charitable entities in the future, or in or under any California charitable corporation trust or charitable organization;

3. For an order directing the defendants Worldwide Church of God, Ambassador College, Inc., and Ambassador International Cultural Foundation to comply with their obligations under the laws of the State of California pertaining to nonprofit organizations organized for charitable purposes; and in the event of their failure so to comply, for such additional equitable relief as may be necessary, appropriate or requisite in the premises to secure the preservation and proper application of the charitable funds presently in their possession and under their control;

4. For an order appointing a receiver pendente lite to take possession, until further order of this Court, of all the property of the defendant charitable entities aforesaid, and of their books and records, and empowering him to take such actions as he deems, in the reasonable exercise of his discretion, appropriate to recover property and assets wrongfully taken from them, and to prevent the further dissipation of charitable property and assets, said power to include without

limitation the power to bring lawsuits in the name of the charitable entities, and to retain independent accountants, lawyers, and other professional assistants to assist him in the prosecution of such lawsuits;

5. For an injunction restraining the named individual defendants, their agents, employees, and all persons acting in concert with them, from interfering in any way with the actions of said receiver, and requiring them furthermore to yield up to said receiver all the books, records, and administrative facilities of said charitable entities;

6. For an injunction restraining the named individual defendants, their agents, employees, and all persons acting in concert with them, from selling or mortgaging, or asserting ownership in any other way, over the property or assets of any of the charitable entities, except as the court-appointed receiver may allow;

7. For costs of suit herein;

8. For such other and different or further relief as to this Court may seem just and proper.

Dated: July 30, 1979.

GEORGE DEUKMEJIAN, Attorney General
LAWRENCE R. TAPPER,
JAMES M. CORDI,
WILLIAM S. ABBEY,
LAUREN R. BRAINARD,
Deputy Attorneys General
By JAMES M. CORDI
Deputy Attorney General
Attorneys for Plaintiff.